

Letter of Findings: 01-20211007
Indiana Individual Income Tax
For the Tax Year 2019

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Individuals were responsible for additional Indiana income tax for 2019 because, after a cross-reference examination with the Department's records, Individuals were not entitled to additional tax credit for tax paid to a county in Ohio.

ISSUE

I. Indiana Individual Income Tax - County Withholding Tax Credits.

Authority: IC § 6-3-1-3.5; IC § 6-3-2-1; IC § 6-3-3-3; IC § 6-3.5-6-23; IC § 6-3.6-8-6; IC § 6-8.1-5-1; IC § 6-8.1-5-2; [45 IAC 3.1-1-76](#); *Comptroller of Maryland v. Wynne*, 135 S. Ct. 1787 (2015); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Miller Brewing Co. v. Indiana Dep't of State Revenue*, 903 N.E.2d 64 (Ind. 2009); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); Income Tax Information Bulletin 28 (May 2012); Income Tax Information Bulletin 28 (November 2016); Commissioner's Directive 57 (July 2016); Income Tax Information Bulletin 115 (November 2017).

Taxpayers protest the Department's individual income tax assessments for 2019.

STATEMENT OF FACTS

Taxpayers, Husband and Wife, are Indiana residents. Each year, Taxpayers jointly file an Indiana Full-Year Resident Individual Income Tax Return (Form IT-40), reporting their Indiana and local income tax and claiming a refund of overpayment.

For 2019 ("Tax Year at Issue"), Husband worked for an employer in Ohio. Taxpayers timely filed their IT-40 return for 2019. On their 2019 return, Taxpayers claimed withholding tax credit on the Schedule 5 and credit for local taxes paid outside Indiana on the Schedule 6. The Indiana Department of Revenue ("Department") processed their return and issued a refund pursuant to Taxpayers' filing.

In 2021, the Department conducted an examination of Taxpayers' filing for 2019 and cross-referenced information in its records. The Department found that Husband's Ohio employer withheld county withholding tax for Husband for 2019 and remitted to the county in Ohio. In turn, the Department determined that Taxpayers overstated their county withholding tax credit on their Indiana Schedule 5 for 2019 and credit for local taxes paid outside Indiana on their Schedule 6 for 2019. The Department adjusted Taxpayers' claimed tax credits on their Indiana Schedules. In other words, on the Indiana Schedule 5, the Department adjusted Taxpayers' withholding tax credit, subtracting the \$724, which was remitted to Ohio, not Indiana. On the Indiana Schedule 6, the Department proceeded to adjust the Indiana county income tax which Taxpayers owed to the county where they reside pursuant to the Indiana law. The Department then assessed additional tax - which included the amount previously refunded erroneously - in addition to penalty and interest as a result.

Taxpayers protested the assessment, submitting supporting documentation - including copies of their "W-2 Wage and Tax Statement" ("W-2s") for 2019. Taxpayers further requested that the Department make its final determination without a hearing. This Letter of Findings ensues based on Taxpayers' documents and information available within the Department's records. Additional facts will be provided as necessary.

I. Indiana Individual Income Tax - County Withholding Tax Credits.

DISCUSSION

After cross-referencing the Department's records and examining Taxpayers' filing for the Tax Year at Issue, the Department determined (1) that there was zero (\$0) Indiana county withholding tax remitted to the Department on Husband's behalf, (2) that Taxpayers overstated their withholding tax credit for 2019, and (3) that Taxpayers owed additional income tax based on their 2019 IT-40 return. The Department thus made "line-by-line" adjustments and assessed Taxpayers additional income tax, penalty, and interest pursuant to IC § 6-8.1-5-2.

Taxpayers agreed that they incorrectly claimed \$724 paid to Ohio on Schedule 5. Taxpayers, however, argued that, on line 13, they correctly reported \$724 on their Schedule 6 for tax paid to Ohio. Taxpayers maintained that the Department erred in adjusting their credit to only \$564.

The issue is whether Taxpayers demonstrated that the Department erred in adjusting Taxpayers' credit to only \$564.

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012). "[E]ach assessment and each tax year stands alone." *Miller Brewing Co. v. Indiana Dep't of State Revenue*, 903 N.E.2d 64, 69 (Ind. 2009). Thus, the taxpayer is required to provide documentation explaining and supporting their challenge that the Department's assessment is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopolite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 485 n.9 (Ind. Tax Ct. 2012).

Indiana imposes a tax "upon the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person." IC § 6-3-2-1(a). To compute what is considered the resident-taxpayer's Indiana income tax, the Indiana statute refers to the Internal Revenue Code. IC § 6-3-1-3.5(a) provides the starting point to determine the taxpayer's taxable income and to calculate what would be his or her Indiana income tax after applying certain additions and subtractions to that starting point, with modifications thereafter.

In addition, Indiana has entered reciprocal agreements with several states. Under the agreed reciprocity, an Indiana resident-taxpayer who earns "income consisting of salaries, wages, and commissions from states [such as, Ohio,] with which Indiana has a reciprocal tax agreement must report all such income as if it were from Indiana." [45 IAC 3.1-1-76](#). Reciprocity, however, does not apply and automatically transfer the withholding tax credits between reciprocal states. Specifically, the same regulation provides, "**Credit cannot be taken for any taxes withheld by or paid to any of these states in connection with salaries, wages, or commissions received from such states. If tax has been withheld by any of these states, a claim for refund should be filed with the state which withheld the taxes.**" *Id.* (Emphasis added).

Indiana law also permits an Indiana resident-taxpayer to claim an income tax credit - not exceeding their Indiana income tax due - for the taxes he or she is required to pay to other states. IC § 6-3-3-3(a). Similarly, when the resident-taxpayer of an Indiana county is required to pay local income tax to a county of another state, the Indiana resident-taxpayer is entitled to a tax credit.

IC § 6-3.6-8-6 (in effect during the Tax Year at Issue) specifically provided:

(a) Except as provided in subsection (b), if for a particular taxable year a local taxpayer is liable for an income tax imposed by a county, city, town, or other local governmental entity located outside Indiana, that local taxpayer is entitled to a credit against the tax liability imposed under this article for that same taxable year. **The amount of the credit equals the amount of tax imposed by the other governmental entity on income derived from sources outside Indiana and subject to the tax imposed under this article. However, the credit provided by this section may not reduce a local taxpayer's tax liability to an amount less than would have been owed if the income subject to taxation by the other governmental entity had been ignored.**

(b) The credit provided by this section does not apply to a local taxpayer to the extent that the other governmental entity provides for a credit to the taxpayer for the amount of taxes owed under this article.

(c) To claim the credit provided by this section, a local taxpayer must provide the department with satisfactory evidence that the taxpayer is entitled to the credit.

(Emphasis added).

To claim this tax credit, the Department accepts "[w]ithholding statements or other evidence of tax payment . . . if no return is required to be filed with the locality outside Indiana." Income Tax Information Bulletin 28 (May 2012), 20120530 Ind. Reg. 045120250NRA (explaining further that "[t]he allowable credit is equal to the lesser of: [1] [t]he amount of income tax actually paid to a locality in another state; [2] [t]he amount of adjusted gross income taxed by the locality outside of the State of Indiana multiplied by the county rate to which the taxpayer is subject; or [3] [t]he amount of county tax due on the Indiana return); see *also* Income Tax Information Bulletin 28 (November 2016), 20161228 Ind. Reg. 045160560NRA.

Following the test established by the United States Supreme Court in *Comptroller of Maryland v. Wynne*, 135 S. Ct. 1787 (2015) and concluding that Indiana tax system satisfies the constitutional requirements, the Department's Commissioner's Directive 57 (July 2016), 20180131 Ind. Reg. 045180053NRA, further explains, in relevant part, as follows:

Indiana [] maintains symmetry in allowing credits at both the state-to-state level and the county-to-county level. Indiana does not permit out-of-state state income taxes to offset Indiana county income taxes or allow out-of-state local income taxes to offset Indiana state income taxes. In Indiana, [] each county chooses whether to impose a county-level income tax, and each county's governing bodies must independently approve both the tax and the rate

Although Indiana does not permit out-of-state state income taxes to offset local county income taxes, Indiana's tax system is internally consistent. Indiana allows both state-to-state and county-to-county credits.

See *also* Income Tax Information Bulletin 115 (November 2017), 20180131 Ind. Reg. 045180053NRA.

Accordingly, the Indiana tax system encompasses different types of tax credits which include refundable tax credits and nonrefundable tax credits. Withholding tax credits are refundable while the tax credits for tax paid to other states or counties of other states are nonrefundable. When an Indiana resident-taxpayer who works in a county of another state, which has a reciprocal agreement with Indiana (such as Oxford, Ohio), the Indiana resident-taxpayer must report his or her W-2 income from Ohio on his or her IT-40 return and vice versa. Only when the employer withholds and remits the withholding taxes to Indiana, is the resident-taxpayer entitled to claim the withholding tax credit on the Schedule 5 of the IT-40 return. When the employer fails to do so, the resident-taxpayer has no withholding tax credits for filing IT-40 return purposes regardless of the source of income. Reciprocity is irrelevant in claiming the withholding tax credits.

The Indiana resident-taxpayer may also claim a tax credit for local income tax paid to a county of another state. Unlike the withholding tax credits on Schedule 5, this tax credit for income tax paid to a county of another state (claimed on the Schedule 6) is not a refundable credit. This tax credit - to the extent of "[t]he amount of county tax due on the Indiana return" - is applied against their Indiana county income tax owed. That is, if the amount of income tax the resident-taxpayer paid to a county of another state *is less* than the county income tax he or she would have owed under her Indiana return, the resident-taxpayer owes the amount of the difference for his or her Indiana county income tax. If the amount of income tax the resident-taxpayer paid to a county of another state *exceeds* the county income tax he or she would have owed under his or her Indiana return, the resident-taxpayer owes no Indiana county income tax. However, the resident-taxpayer receives no refund of the overpayment from Indiana on that income even when he or she has paid more tax to the county of another state.

In this instance, it should be noted that Taxpayers accepted the Department's adjustment of Schedule 5 concerning their withholding tax credit. As mentioned earlier, these withholding tax credits are state specific. The reciprocity does not apply to withholding tax credits among reciprocal states. Taxpayers' W-2s showed that Husband's Ohio employer withheld and remitted state withholding taxes to Indiana, but it did not do so with regards to the local or county withholding taxes. Rather, Taxpayers' W-2s showed that Husband's Ohio employer withheld and remitted the local taxes to the locality in Ohio. As mentioned earlier, "[c]redit cannot be taken for any taxes withheld by or paid to any of these states in connection with salaries [or] wages [] received from such states. If tax has been withheld by any of these states, a claim for refund should be filed with the state which withheld the taxes." [45 IAC 3.1-1-76](#). In other words, Indiana did not receive the claimed county or local withholding tax from his Ohio employer. Therefore, there were no county withholding tax credits available to be claimed on Taxpayers' Schedule 5 to IT-40 return for 2019. If there is a remedy, it is with Ohio.

Taxpayers pointed to Husband's W-2, asserting that the Department erred in reducing their tax credit claimed on the Schedule 6, a nonrefundable credit, for income tax paid to a county of another state. Upon review, however,

Taxpayers' reliance of their W-2s is misplaced. As mentioned earlier, "[t]he allowable credit is equal to the **lesser** of: [1] [t]he amount of income tax actually paid to a locality in another state; [2] [t]he amount of adjusted gross income taxed by the locality outside of the State of Indiana multiplied by the county rate to which the taxpayer is subject; or [3] **[t]he amount of county tax due on the Indiana return.**" Income Tax Information Bulletin 28. **(Emphasis added)**. Taxpayers' documents demonstrated that as Indiana residents, Taxpayers would have been responsible for their Indiana county income tax for 2019. The amount of tax Husband would have owed on his wage (as the amount stated in W-2s) multiplied [0.0175 percent], which is less than the tax Husband would have paid to locality outside of Indiana. This is the lesser of the three amounts listed under Income Tax Information Bulletin 28 (May 2012), which also explains that the lesser amount is the allowed amount. The Department thus correctly adjusted the amount Husband would have owed pursuant to the above referenced Indiana law. This tax credit under Schedule 6 is a nonrefundable credit.

Finally, it should be noted that, pursuant to IC § 6-3.5-6-23(a) and the *Wynne* decision, the Department properly computed and granted Taxpayers the tax credit based on Taxpayers' W-2 Statements and their 2019 IT-40 as filed, for the county tax presumably paid to the county or city in Ohio. The \$564 tax credit represent Husband's Indiana county income tax for those years.

In short, given the totality of the circumstances, Taxpayers' supporting documentation failed to demonstrate that the proposed assessments were wrong. The Department correctly adjusted Taxpayers' 2019 IT-40 return to comport with the records.

FINDING

Taxpayers' protest is respectfully denied.

November 19, 2021

Posted: 03/02/2022 by Legislative Services Agency
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